

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - X
:
UNITED STATES OF AMERICA :
:
- v. - :
:
MELVILLE TEN CATE, :
:
Defendant. :
:
- - - - - X

INDICTMENT

22 Cr.

22 CRIM 198

COUNT ONE

(Fraud in Connection with a Tender Offer)

The Grand Jury charges:

Background on MELVILLE TEN CATE and Xcalibur Aerospace Ltd.

1. MELVILLE TEN CATE, the defendant, is a Dutch and United States citizen. At all times relevant to this Indictment, TEN CATE was the Chief Technology Officer and chief executive of Xcalibur Aerospace Ltd. ("Xcalibur"), a private company incorporated in or about May 2016 and based in London, England.
2. In or about August 2016, at the direction of MELVILLE TEN CATE, the defendant, a member of Xcalibur's board of directors established Xcalibur Aerospace LLC ("Xcalibur U.S.") as a business entity in the state of Delaware. Xcalibur U.S. conducted no business.
3. From its founding through in or about November 2018, Xcalibur had no revenue and no capital. In or about November 2018, the Xcalibur board of directors concluded that Xcalibur

was not a viable business entity, and the entire board of directors resigned. As a result, beginning in or about December 2018, MELVILLE TEN CATE, the defendant, became Xcalibur's sole director.

4. In or about August 2019, MELVILLE TEN CATE, the defendant, caused Xcalibur to file a statement with the Companies House, the United Kingdom's registrar of companies, that falsely claimed Xcalibur had four shareholders that collectively owned more than 300,000,000 shares in the company. On or about November 5, 2020, Xcalibur filed an updated statement with the Companies House that claimed it was wholly owned by Xcalibur U.S.

5. In or about July 2021, a United Kingdom court ordered Xcalibur to be wound up under the Insolvency Act and its assets sold to satisfy its debts.

Overview of the Fraudulent Schemes

6. From in or about August 2019 until in or about November 2020, MELVILLE TEN CATE, the defendant, executed fraudulent schemes designed to induce others to invest in, or otherwise transfer money to, Xcalibur and TEN CATE. First, TEN CATE attempted to secure debt financing from U.S. banks, or from third party debt issuers to be secured by the banks. In doing so, TEN CATE materially misrepresented Xcalibur's business activities and finances to the banks and other potential

investors. In a second scheme, in and about November 2020, TEN CATE placed an advertisement in a national newspaper (the "Newspaper") in which he falsely claimed that Xcalibur had secured \$11 billion of financing and was making a tender offer to acquire a multibillion-dollar U.S. corporation (the "Target Company"). In furtherance of his scheme to issue the false tender offer for the Target Company, TEN CATE sent fabricated payment confirmations to the Newspaper and to a New York, New York-based printer (the "Printer") TEN CATE hired to file the false tender offer with the U.S. Securities and Exchange Commission ("SEC").

The \$500 Million Fraudulent Debt Financing Scheme

7. Beginning in or around August 2019, MELVILLE TEN CATE, the defendant, executed a scheme to defraud U.S. banks and other potential investors of approximately \$500 million. In furtherance of this scheme, TEN CATE told prospective lenders that that Xcalibur had designed an advanced unmanned aircraft (the "Aircraft"), and that the \$500 million of financing was required for Xcalibur to build prototypes and secure government contracts. In truth and in fact, Xcalibur had not designed the Aircraft.

8. In furtherance of this scheme, MELVILLE TEN CATE, the defendant, contracted with a U.S.-based investment bank (the "Investment Bank") to put together a "pitch deck" and data room

for potential lenders describing Xcalibur's business and the proposed deal. TEN CATE supplied the Investment Bank with false data for inclusion in the pitch deck and data room. For example, TEN CATE supplied financial statements that claimed in calendar year 2019 that Xcalibur had revenue of more than £360 million and net profits of more than £70 million. TEN CATE also falsely claimed that Xcalibur's financial records had been audited by an international accounting firm, that Xcalibur had outside investors, and that Xcalibur had cash reserves of almost £9.8 billion.

9. At the direction of MELVILL TEN CATE, the defendant, the Investment Bank contacted several potential investors in an effort to secure some or all of the \$500 million in debt financing. In furtherance of the scheme to fraudulently obtain debt financing, on or about February 25, 2020, TEN CATE spoke by phone with a New York, New York-based managing director for a large, national financial institution (the "Director" and the "Bank"). During this meeting, TEN CATE falsely described the capabilities of the Aircraft he claimed Xcalibur had developed and proposed the Bank immediately provide or underwrite significant financing to Xcalibur to build prototypes of the Aircraft.

10. Following this meeting, the Director sent MELVILLE TEN CATE, the defendant, an email with a list of requests to verify

that Xcalibur and the Aircraft were as advertised. TEN CATE's response was to falsely claim that "[t]he IP works as advertised and belongs 100% to [Xcalibur]" and to counter propose that the Bank give Xcalibur "an immediate release of \$65m" with the "[r]est of the funding [] released in 2 tranches over next 6-8 weeks." In responses to requests from the Director that TEN CATE verify that Xcalibur had established a U.S. business entity and transferred all relevant assets to that entity, TEN CATE wrote that Xcalibur would soon make a tender offer for and merge with the Target Company, a multibillion-dollar U.S. Aerospace Corporation whose shares were traded on the New York Stock Exchange.

11. MELVILLE TEN CATE, the defendant, and Xcalibur failed to secure any financing from outside sources and failed to compensate the Investment Bank for its services, despite repeated promises to do so.

The Fraudulent Tender Offer and the Related Wire Fraud Scheme

12. In and about November 2020, MELVILLE TEN CATE, the defendant, caused an advertisement for a false tender offer (the "Tender Offer") to be published by the Newspaper, a prominent national newspaper based in New York, New York. In the purported Tender Offer, TEN CATE falsely represented that Xcalibur would purchase all outstanding shares of the Target Company and that Xcalibur had secured financing for the Tender Offer. In support

of the fraudulent Tender Offer, and, to secure advertisement for the Tender Offer and the actual filing of the Tender Offer, TEN CATE sent false and misleading email communications, including fabricated wire transfer confirmation documents, to the Newspaper and the Printer, both of which were operating in Manhattan.

13. On or about November 4, 2020, MELVILLE TEN CATE, the defendant, contacted the Newspaper and stated that his company "is publishing a Tender Offer on a listed US corporation." In follow-up communications, TEN CATE informed the Newspaper that the Tender Offer was for the Target Company and that TEN CATE wanted to purchase print and online advertising to market the purported Tender Offer.

14. On or about November 6, 2020, MELVILLE TEN CATE, the defendant, signed a contract with the Newspaper for the purchase of multiple weeks of print and online advertising for the Tender Offer. The same day, TEN CATE emailed the Newspaper a wire transfer confirmation that claimed to show Xcalibur had paid the amount owed to the Newspaper on the advertising contract. In truth and in fact, the wire confirmation was fabricated, and TEN CATE never paid the Newspaper for the advertising.

15. On or about November 9, 2020, the Newspaper published the Tender Offer, which claimed that Xcalibur intended to pay approximately \$14.7 billion for all outstanding shares of the

Target Company and falsely stated that Xcalibur had existing loan agreements for up to \$11 billion of financing to complete the offer. Later that day, the Newspaper asked MELVILLE TEN CATE, the defendant, for proof that he had made the required filings with the SEC. Without this confirmation, the Newspaper informed TEN CATE that it would not run any additional advertisements for the Tender Offer.

16. On or about November 10, 2020, MELVILLE TEN CATE, the defendant, contacted the Printer and informed the Printer that he was issuing the Tender Offer and requested that the Printer assist in completing the required filing with the SEC.

17. On or about November 12, 2020, the Printer sent TEN CATE an invoice for services related to SEC filings for the Tender Offer. TEN CATE responded by email, in part, "I know you see all kinds but we are not buying [the Target Company] and stiffing you for 5K. Getting that wire confirmation to you soonest."

18. On or about November 16, 2020, MELVILLE TEN CATE, the defendant, emailed the Printer a wire transfer confirmation that purported to show Xcalibur had paid the amount owed to the Printer. In truth and in fact, the payment confirmation sent to the Printer was fabricated, appeared nearly identical to the fake payment confirmation sent to the Newspaper, and the Printer never received payment from TEN CATE. Because the Printer was

not paid, the Printer never made the requisite filings with the SEC to formalize the Tender Offer.

Statutory Allegations

19. In or about November 2020, in the Southern District of New York and elsewhere, MELVILLE TEN CATE, the defendant, willfully and knowingly engaged in fraudulent, deceptive, and manipulative acts and practices in connection with a tender offer, in that TEN CATE publicly announced that TEN CATE and a party on whose behalf TEN CATE was acting planned to make a tender offer that had not yet been commenced, without the intention to commence the offer within a reasonable time and complete the offer, and without the reasonable belief that TEN CATE and the party on whose behalf TEN CATE was acting would have the means to purchase securities to complete the offer, to wit, TEN CATE caused an advertisement to be published in the Newspaper in which TEN CATE falsely stated that Xcalibur was making a tender offer for the Target Company and that Xcalibur had secured the needed financing for the tender offer, when, in truth and in fact, TEN CATE knew that Xcalibur could not complete the tender offer, including because it lacked the financing to do so.

(Title 15, United States Code, Sections 78n(e) and 78ff; Title 17 Code of Federal Regulations, Section 240.14e-8(a), (c), and Title 18, United States Code, Section 2.)

COUNT TWO
(Securities Fraud)

The Grand Jury further charges:

20. The allegations contained in paragraphs 1 through 18 of this Indictment are repeated and realleged as if fully set forth herein.

21. In or about November 2020, in the Southern District of New York and elsewhere, MELVILLE TEN CATE, the defendant, willfully and knowingly, directly and indirectly, by use of the means and instrumentalities of interstate commerce, and of the mails and of the facilities of national securities exchanges, used and employed, in connection with the purchase and sale of securities, manipulative and deceptive devices and contrivances, in violation of Title 17, Code of Federal Regulations, Section 240.10b-5, by: (a) employing devices, schemes, and artifices to defraud; (b) making untrue statements of material fact and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engaging in acts, practices, and courses of business which operated and would operate as a fraud and deceit upon persons, to wit, TEN CATE caused an advertisement to be published in the Newspaper in which TEN CATE falsely stated that Xcalibur was making a tender offer for the Target Company and that Xcalibur had secured the needed financing for the tender offer,

when, in truth and in fact, TEN CATE knew that Xcalibur could not complete the tender offer, including because it lacked the financing to do so.

(Title 15, United States Code, Sections 78j(b) & 78ff; Title 17, Code of Federal Regulations, Section 240.10b-5; and Title 18, United States Code, Section 2.)

COUNT THREE
(Wire Fraud)

The Grand Jury further charges:

22. The allegations set forth in paragraphs 1 through 18 are realleged and incorporated by reference as if fully set forth herein.

23. In or about November 2020, in the Southern District of New York and elsewhere, MELVILLE TEN CATE, the defendant, willfully and knowingly, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, did transmit and cause to be transmitted by means of wire, radio, and television communication in interstate and foreign commerce, writings, signs, signals, pictures, and sounds, for the purpose of executing such scheme and artifice, to wit, TEN CATE made material misrepresentations by email, including the transmission of fraudulent wire transfer confirmation documents, to the Newspaper and the Printer as part of a scheme to advertise and

make a fraudulent tender offer, some of which emails transited through the Southern District of New York.

(Title 18, United States Code, Sections 1343 and 2.)

COUNT FOUR
(Wire Fraud)

The Grand Jury further charges:

24. The allegations set forth in paragraphs 1 through 18 are realleged and incorporated by reference as if fully set forth herein.

25. From at least in or about August 2019 up to and including in or about March 2020, in the Southern District of New York and elsewhere, MELVILLE TEN CATE, the defendant, willfully and knowingly, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, did transmit and cause to be transmitted by means of wire, radio, and television communication in interstate and foreign commerce, writings, signs, signals, pictures, and sounds, for the purpose of executing such scheme and artifice, to wit, TEN CATE engaged in a scheme to defraud the Investment Bank and potential investors in Xcalibur by making false and misleading statements in connection with his efforts to secure financing for Xcalibur, including through thorough interstate wires, some of which

transited through the Southern District of New York.

(Title 18, United States Code, Sections 1343 and 2.)

FORFEITURE ALLEGATION

26. As a result of committing the offenses alleged in Counts One through Four of this Indictment, MELVILLE TEN CATE, the defendant, shall forfeit to the United States, pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28 United States Code, Section 2461(c), any and all property, real and personal, that constitutes or is derived from proceeds traceable to the commission of said offenses, including but not limited to a sum of money in United States currency representing the amount of proceeds traceable to the commission of said offenses that the defendant personally obtained.

Substitute Asset Provision

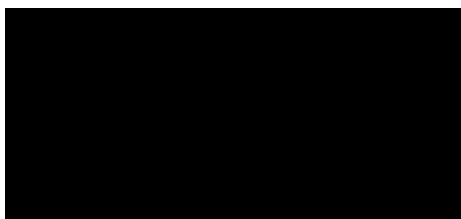
27. If any of the above-described forfeitable property, as a result of any act or omission of the defendant:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third party;
- c. has been placed beyond the jurisdiction of the court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which

cannot be divided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of the defendant up to the value of the forfeitable property described above.

(Title 18, United States Code, Sections 981 and 982;
Title 21, United States Code, Section 853;
Title 28, United States Code, Section 2461.)



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(15 U.S.C. §§ 78j(b), 78n(e), and 78ff;
18 U.S.C. §§ 1343 and 2;
17 C.F.R. §§ 240.10b-5 and
240.14e-8(a), (c))

DAMIAN WILLIAMS

United States Attorney

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